

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

UNITED STATES OF AMERICA	§	
	§	
v.	§	CRIMINAL NO. H-07-381
	§	
ROBERT KERN and	§	
THE HUNTING CONSORTIUM	§	

**MEMORANDUM AND ORDER**

This Lacey Act case is before the Court on Defendants’ Motion to Dismiss (“Motion”) [Doc. # 28]. The Motion was filed based on Defendants’ belief that they were charged pursuant to 18 U.S.C. § 2(a) with aiding and abetting. The Government filed its Response [Doc. # 37], advising that it was prosecuting Defendants under § 2(b), not § 2(a). Defendants filed a Reply [Doc. # 39], arguing that the indictment should be dismissed even if the prosecution is pursuant to § 2(b) because the United States does not have evidence to support the charge.


Robert Kern and his company, The Hunting Consortium (“THC”), are charged with arranging hunting trips to Russia where Kern and THC caused client hunters to shoot moose and sheep from helicopters in violation of Russian law. Kern and THC are charged with causing the hunters to import the illegally hunted animal trophies into

the United States in violation of the Lacey Act, 16 U.S.C. §§ 3372(a)(1)(A) and 3373 (d)(1)(A).

Defendants seek dismissal of the indictment against them because the United States does not have evidence that Kern or THC knew about or encouraged the illegal helicopter hunting and the subsequent importation of the trophies. The Government presented its evidence to a federal grand jury and obtained the current indictment. Consideration of the evidence and whether it establishes either Defendant's guilt beyond a reasonable doubt is to be decided by the jury at trial, not by the Court on a pretrial motion to dismiss the indictment. *See United States v. Costello*, 350 U.S. 359, 363 (1956); *United States v. Flores*, 404 F.3d 320, 325 (5th Cir. 2005) (Court may dismiss indictment on pretrial motion only if case involves pure issue of law without evidentiary or factual disputes); *United States v. Mann*, 517 F.2d 259, 267 (5th Cir. 1975); *United States v. Fadel*, \_\_\_ F. Supp. 2d \_\_\_, 2007 WL 3102106, \*1 (N.D. Miss. Oct. 19, 2007). As a result, it is hereby

**ORDERED** that Defendants' Motion to Dismiss [Doc. # 28] is **DENIED**.

SIGNED at Houston, Texas this 31<sup>st</sup> day of October, 2007.

  
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Nancy F. Atlas  
United States District Judge